IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15085 of 2005

For Approval and Signature:
HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHWINBHAI NATUBHAI PATEL & 13 - Petitioner(s)

Versus

CHANDASINH JEEBAVA RATHOD - Respondent(s)

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Appearance :
MR BD KARIA for Petitioners
MR ARPIT KAPADIA for Ms. SHAILI A KAPADIA for Respondent

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 01/08/2005

ORAL JUDGMENT

Heard the learned advocates. Rule. Learned advocate Mr. Kapadia waives service of rule.

This writ petition preferred under Article 227 of the Constitution of India challenges the legality and validity of the judgment and order dated 16th April, 2005 passed by the learned Joint District Judge, Vadodara in Misc. Civil Appeal No. 48 of 2005.

The petitioners, defendants nos. 2 to 13/4 in Regular Civil Suit No. 415 of 2004 are the owners of the agricultural land Survey No. 641 admeasuring 3000 sq.mtrs. situated at Gorwa, Taluka-District Vadodara. The respondent no. 1-plaintiff has instituted above referred Civil Suit No. 415 of 2004 in the Court of learned Civil Judge [SD], Vadodara for declaration of title and permanent injunction. According to the plaintiff, he has been in possession of part of the suit land within the knowledge of its owners for the past twenty five years and has become owner thereof by adverse possession. The defendants were trying to interfere with his possession, therefore, the Suit. In support of his claim, he has produced the electricity bills and the ration card. The defendants, the present petitioners, contested the suit. According to the petitioners, the plaintiff and some others have constructed kachcha huts on the public road adjacent to the land Survey no. 641. As the plaintiff and others were trying to encroach upon the land Survey No. 641, the petitioners had to construct a compound wall to

prevent the encroachment. The plaintiff, however, restrained the petitioners from constructing such compound wall on the boundary towards the public land in their occupation.

Pending the suit, the plaintiff moved Application Exh.5 for *interim* injunction under Order 39 Rules 1 & 2 CPC. The learned Civil Judge, by order dated 24th February, 2005, held that the plaintiff had failed to establish a *prima facie* case and that the balance of convenience lay in favour of the petitioners and that no hardship shall cause to the plaintiff in case the *interim* injunction were refused. The learned Civil Judge accordingly rejected the Application Exh. 5. Feeling aggrieved, the plaintiff preferred Misc. Civil Appeal No. 48 of 2005 in the Court of learned District Judge, Vadodara. The learned Joint District Judge allowed the Appeal and directed that, "...**It is ordered that the defendants are hereby restrained from obstructing the possession and occupation of the plaintiff over the disputed property and the defendants are also restrained from entering the disputed property till final disposal of the suit."** Accordingly, Application Exh.5 stood allowed. Therefore, the present *writ* petition.

Mr. Karia has submitted that by *impugned* order, the lower appellate Court has granted injunction with respect to the entire land Survey No. 641. *Admittedly*, the plaintiff had claimed possession over part of the land Survey No. 641. Mr. Kapadia has contested this petition. He has submitted that this Court shall not interfere with the order of the Court below in exercise of its supervisory *jurisdiction* conferred by *Article* 227 of the Constitution.

On perusal of the plaint, it is evident that the plaintiff has claimed possession over part of the land Survey No. 641. Though it is not made clear how much of the land is in his occupation. The Commissioner's report {*Mark 9/1*} reveals that the plaintiff has constructed eight rooms over the public land. On the rear of the said eight rooms, open land admeasuring 12' x 25' is in occupation of the plaintiff, which falls within the land bearing Survey No. 641. The said portion of 12' x 25' has been fenced by the plaintiff by a 2 ½ ft. high wall on southern and western side and 1 ½ ft. High wall on the northern side.

On the facts and in the circumstances of the case, this petition is allowed. Application Exh. 5 made by the plaintiff is allowed with respect to the disputed piece

of land admeasuring 12′ x 25‘ bond by a wall as aforesaid on condition that the plaintiff shall maintain *status quo* as to the disputed piece of land; shall use the said land as an open piece of land and shall not make any construction or cover the same by a roof.

The *impugned* order made by the Court below shall stand modified to the aforesaid extent. Rule is made absolute. The parties shall bear their own cost .

{Miss R.M Doshit, J.}

*Prakash**